

Before the
Federal Communications Commission
Washington, DC

In the Matter of)	
)	
Closed Captioning of IP-Delivered)	MB Docket No. 11-154
Video Programming: Implementation of the)	
21 st Century Communications and Video)	
Accessibility Act of 2010)	

COMMENTS OF THE ENTERTAINMENT SOFTWARE ASSOCIATION

The Entertainment Software Association (“ESA”) welcomes this opportunity to comment on the above-captioned notice of proposed rulemaking on IP-delivered video programming (“NPRM”).¹ The ESA supports the Commission’s efforts to implement, consistent with congressional intent, the Twenty-First Century Communications and Video Accessibility Act (“CVAA”).

In the NPRM’s discussion of exempted apparatus, the Commission invited comment on issues related to the “primarily designed”/“essential utility” waiver provision and how that provision might apply to various consumer electronics, including video game consoles.² Although all three home consoles enable the playback of video programming to varying degrees, all three are first and foremost

¹ The ESA is the U.S. association exclusively dedicated to serving the business and public affairs needs of companies that publish computer and video games for video game consoles, personal computers, and the Internet. ESA’s membership includes, among others, Microsoft, Nintendo, and Sony, the manufacturers of the three major console systems. For a list of ESA’s other members, please see <http://www.theesa.com/about/members.asp>.

² The CVAA gives the Commission authority to waive the requirements of its rules requiring the display, render or pass through of closed captioning for apparatus or any class of apparatus “(i) primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or (ii) for equipment designed for multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.” 47 U.S.C. §303(u)(2)(C).

game consoles designed and optimized for gameplay, as the ESA has noted in a related proceeding.³ For example, the consoles' specialized controllers, user interfaces, and hardware configurations all are optimized for interacting with games as their "essential utility."⁴ Undoubtedly, many gamers also use their consoles to play back video programming, but as a secondary benefit to the primary role of the console as a game device.

Although we believe that the Commission has the authority to waive the requirements of CVAA Section 203 with respect to video games, we are continuing to evaluate the proposed implementation of the closed captioning requirements and have made no decision on whether to seek a waiver.

Finally, we urge the Commission to adopt a two-year phase-in period. Imposing closed captioning for IP-delivered video programming undoubtedly will present technical challenges, and a reasonable phase-in period will be necessary to resolve those. Also, a two-year phase-in period would be consistent with the approach the Commission has adopted in a related CVAA proceeding.⁵

Respectfully submitted,

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³ ESA Reply Comments, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198, at 14-16 (filed May 23, 2011).

⁴ Some of these controllers also can be used for video programming, but they all feature an assortment of controls that are optimized for and only used in connection with gameplay.

⁵ Report and Order and Further Notice of Proposed Rulemaking, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198, at 14-16 (filed May 23, 2011).